

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2111 – SB 2062

April 9, 2018

SUMMARY OF ORIGINAL BILL: Changes, from March 1 to April 1, the date by which the Department of Safety (DOS) is required to submit an annual seizure report to the Speakers and the Chairs of the Judiciary Committees of the General Assembly.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (016881): Deletes all language after the enacting clause. Reduces the size of drug-free school zones and alters the enhancement for selling or delivering a controlled substance to a minor and alters the enhancement for casually exchanging a controlled substance to a minor.

Creates the position of alternative sentencing coordinator for 18 judicial districts. Authorizes the District Attorneys General Conference to select which 18 judicial districts will receive an alternative sentencing coordinator position. Creates an appellate division within the District Public Defenders Conference (DPDC) consisting of five attorneys and support staff for public defenders which would represent indigent defendants in appellate level cases. Authorizes trial attorneys to focus on trial level casework across the state.

Requires a prior conviction for vehicular homicide or aggravated vehicular homicide be considered in determining whether a person is a repeat or multiple offender and the number of prior offenses regardless of whether the violation occurred more than 10 years before the date of the present violation for violations of driving under the influence (DUI).

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

**Increase State Expenditures – \$140,000/One-Time
\$1,821,600/Recurring**

Decrease State Expenditures – Net Impact – \$3,603,100 Incarceration*

Assumptions relative to Drug-Free School Zones:

- Tennessee Code Annotated § 39-17-432 enhances drug offenses under Tenn. Code Ann. § 39-17-417 by one classification if committed within 1,000 feet of a school, child care agency, public library, or park, also known as a “drug-free zone”.

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- The proposed legislation reduces the drug-free school zone from 1,000 feet to 500 feet from a school or the area between a school and a divided state or federal highway, whichever is less.
- Statistics from the Department of Correction (DOC), indicate that the following annual admissions relate to drug offenses committed within a drug-free school zone:
 - Class A felony – 11.8;
 - Class B felony – 24.8;
 - Class C felony – 12.2; and
 - Class D felony – 6.1.
- It is assumed that one-half of these offenses are committed beyond 500 feet from a school or beyond a divided state or federal highway less than 500 feet from a school.
- It is assumed that the proposed legislation will result in six class A felonies (11.8×0.5) being punished as class B felonies, 12 class B felonies (24.8×0.5) being punished as class C felonies, six class C felonies (12.2×0.5) being punished as class D felonies, and three class D felonies (6.1×0.5) being punished as a class E felony.
- The average time served by felony class is:
 - Class A – 17.69 years;
 - Class B – 6.39 years;
 - Class C – 3.28 years;
 - Class D – 2.15 years; and
 - Class E – 1.31 years.
- According to the DOC, the average operating cost per offender per day for calendar year 2018 is \$71.08.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for one (6×0.1178) less enhancement to a class A felony admission for a total of seven ($6 + 1$) class B felony convictions.
- Population growth will account for one (12×0.1178) less enhancement to a class B felony admission for a total of 13 ($12 + 1$) class C felony convictions.
- Population growth will account for one (6×0.1178) less enhancement to a class C felony admission for a total of seven ($6 + 1$) class D felony convictions.
- Population growth will not impact admissions enhanced to a class D felony under current law that would be class E felony convictions under the provisions of the proposed legislation.
- A recidivism discount does not apply to this legislation because it is reducing time served.
- The proposed legislation will result in seven offenders each year serving 11.3 fewer years ($17.69 - 6.39$), or 4,127.33 fewer days, than under current law.
- The proposed legislation will decrease state incarceration costs by an estimated \$2,053,594 ($4,127.33 \text{ days} \times \$71.08 \times 7 \text{ offenders}$) for the seven class B felonies.
- The proposed legislation will result in 13 offenders each year serving 3.11 fewer years ($6.39 - 3.28$), or 1,135.93 fewer days, than under current law.

- The proposed legislation will decrease state incarceration costs by an estimated \$1,049,645 (1,135.93 days x \$71.08 x 13 offenders) for the 13 class C felonies.
- The proposed legislation will result in nine offenders each year serving 1.13 fewer years (3.28 – 2.15), or 412.73 fewer days, than under current law.
- The proposed legislation will decrease state incarceration costs by an estimated \$264,032 (412.73 days x \$71.08 x 9 offenders) for the nine class D felonies.
- The proposed legislation will result in three offenders each year serving 0.84 fewer years (2.15 – 1.31), or 306.81 fewer days, than under current law.
- The proposed legislation will decrease state incarceration costs by an estimated \$65,424 (306.81 days x \$71.08 x 3 offenders) for the three class E felonies.
- The total decrease in state incarceration relative to reducing the drug-free school zone is \$3,432,695 (\$2,053,594 + \$1,049,645 + \$264,032 + \$65,424).

Assumptions relative to Selling, Delivering, or Casually Exchanging Drugs to Minors:

- Tennessee Code Annotated § 39-17-417(k) requires any violation of or a conspiracy to violate the section be punished one classification higher if the recipient or intended recipient was a minor.
- The proposed legislation would require punishment one sentencing range higher rather than one classification higher.
- The average time served by felony class is:
 - Class A – 17.69 years;
 - Class B – 6.39 years;
 - Class C – 3.28 years;
 - Class D – 2.15 years; and
 - Class E – 1.31 years.
- Assuming that the average offender serves roughly to their release eligibility date, these fall within the time served for Range II.
- The possible sentences within Range II are:
 - Class A – 25-40 years;
 - Class B – 12-20 years;
 - Class C – 6-10 years;
 - Class D – 4-8 years; and
 - Class E – 2-4 years.
- Assuming the average offender receives a sentence in the middle of the range, the average sentence received within Range II is:
 - Class A – 32.5 years;
 - Class B – 16 years;
 - Class C – 8 years;
 - Class D – 6 years; and
 - Class E – 3 years.
- Based on these figures, the average offender serves the following percentage of the sentence received:
 - Class A – 54.43 percent (17.69 / 32.5);
 - Class B – 39.94 percent (6.39 / 16);

- Class C – 41 percent (3.28 / 8);
 - Class D – 35.83 percent (2.15 / 6); and
 - Class E – 43.67 percent (1.31 / 3).
- The proposed legislation will result in current admissions enhanced one classification under Tenn. Code Ann. § 39-17-417 being enhanced one sentencing range, to Range III for the average offender.
- The possible sentences under Range III are:
 - Class A – 40-60 years;
 - Class B – 20-30 years;
 - Class C – 10-15 years;
 - Class D – 8-12 years; and
 - Class E – 4-6 years.
- Assuming the average offender receives a sentence in the middle of the range, the average sentence received within Range III is:
 - Class A – 50 years;
 - Class B – 25 years;
 - Class C – 12.5 years;
 - Class D – 10 years; and
 - Class E – 5 years.
- Assuming a similar percentage of the sentence received will be served, the average time served for an offender sentenced within Range III is:
 - Class A – 27.22 (50 x 54.43%);
 - Class B – 9.98 (25 x 39.94%);
 - Class C – 5.13 (12.5 x 41%);
 - Class D – 3.58 (10 x 35.83%); and
 - Class E – 2.18 (5 x 43.67%).
- Statistics from the DOC indicate that the following annual admissions relate to selling or delivering drugs to a minor:
 - Class A felony – 1.4;
 - Class B felony – 2.9; and
 - Class C felony – 0.3.
- The proposed legislation will result in one class A felony admission each year being sentenced as a class B felony within one sentencing range higher.
- The proposed legislation will result in this admission serving 7.71 years (17.69 average time served for a class A felony – 9.98 estimated average time served for a class B felony within Range III), or 2,816.08 days, less than under current law.
- Population growth and recidivism will not impact this admission.
- The proposed legislation will decrease recurring state incarceration costs by \$200,167 (1 admission x 2,816.08 days x \$71.08 per day).
- The proposed legislation will result in three class B felony admissions each year being sentenced as class C felonies within one sentencing range higher.
- The proposed legislation will result in these admissions serving 1.26 years (6.39 average time served for a class B felony – 5.13 estimated average time served for a class C felony within Range III), or 460.22 days, less than under current law.
- Population growth and recidivism will not impact these admissions.

- The proposed legislation will decrease recurring state incarceration costs by \$98,137 (3 admissions x 460.22 days x \$71.08 per day).
- The proposed legislation will result in one class C felony admission every three years being sentenced as class D felony within one sentencing range higher.
- The proposed legislation will result in this admission serving 0.3 years (3.28 average time served for a class B felony – 3.58 estimated average time served for a class C felony within Range III), or 109.58 days, more than under current law.
- Population growth and recidivism will not impact this admission.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every three years serving 0.3 years (109.58 days) for an annualized total of \$2,596 [(\$71.08 x 109.58 days) / 3].
- Statistics from the DOC show 0.1 admissions per year over the last 10 years for class D felony casual exchange to a minor and 0.2 admissions per year over the last 10 years for class E felony casual exchange to a minor.
- The proposed legislation requires these admissions be punished within one sentencing range higher than under current law.
- The proposed legislation will result in one class D felony admission every 10 years being sentenced within one range higher and one class E felony admission every five years being sentenced within one range higher.
- Population growth and recidivism will not impact these admissions.
- The average time served for a class D felony is 2.15 years, which is within the time served under Range II. The estimated time served within Range III is 3.58 years. The proposed legislation will result in each offender serving an additional 1.43 years (3.58 – 2.15), or 522.31 days.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every 10 years serving 1.43 years (523.53 days) for an annualized total of \$3,713 [(\$71.08 x 522.31 days) / 10].
- The average time served for a class E felony is 1.31 years, which is within the time served under Range II. The estimated time served within Range III is 2.18 years. The proposed legislation will result in each offender serving an additional 0.87 years (2.18 – 1.31), or 317.77 days.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every five years serving 0.87 years (317.77 days) for an annualized total of \$4,517 [(\$71.08 x 317.77 days) / 5].

Assumptions relative to DUI Offenses:

- The proposed legislation requires any prior conviction for vehicular homicide or aggravated vehicular homicide to be considered in determining whether a person is a repeat or multiple offender and the number of prior offenses regardless of whether the violation occurred more than 10 years before the date of the present violation.
- Pursuant to Tenn. Code Ann §55-10-401(c), DUI convictions in other states can be used to enhance a DUI conviction in Tennessee. Further, prior convictions for vehicular

assault, vehicular homicide by intoxication, aggravated vehicular homicide, and adult driving under the influence are treated as prior convictions for DUI.

- The legislation will result in two additional DUI offenses each year for fourth DUI offenses that will be a Class E felony; and one additional DUI offense each year being enhanced to a sixth DUI offense that is a Class C felony that would otherwise be punished as a Class E felony.
- The average time served for Class E felony DUI is 1.29 years (471.17 days); and the average time served for a Class C felony is 3.22 years.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect these admissions.
- A recidivism discount applies, but due to the low number of admissions added by this provision of the legislation, the recidivism discount does not impact the incarceration cost for these admissions.
- According to the DOC, the average operating cost per offender per day for FY17-18 is \$71.08.
- The two additional Class E felony admissions will increase state incarceration costs by \$66,982 [(471.17 days x \$71.08) x 2 admissions].
- The admission enhanced from a Class E felony to a Class C felony will result in additional time served of 1.93 years (3.22 years – 1.29 years) or 704.93 days.
- The enhanced Class C felony will increase state incarceration costs by \$50,106 (704.93 days x \$71.08).
- The total increase in state incarceration costs is estimated to be \$117,088 (\$66,982 + \$50,106).
- Any impact on local incarceration expenditures is estimated to be not significant.

Total Impact on State Incarceration Costs:

- The net impact on state incarceration costs is a recurring decrease of \$3,603,085 [(\$3,432,695 decrease + \$200,167 decrease + \$98,137 decrease) – (\$2,596 increase + \$3,713 increase + \$4,517 increase + \$117,088)].

Impact on the Courts, Public Defenders, and District Attorneys:

- The proposed legislation as amended creates an appellate division within the DPDC.
- The division would consist of one “after 10 year” level attorney, four “after 4 year” level attorneys, and two “level 5” legal secretary positions.
- There will be a one-time increase in state expenditures of \$50,000 to create the new division.
- The starting base salary for one “after 10 year” level attorney is \$79,968.
- The recurring increase in state expenditures for one “after 10 year” level attorney is estimated to be \$100,161 (\$79,968 salary + \$20,193 benefits).
- The starting base salary for a “after four year” level attorney is \$61,452.

- The recurring increase in state expenditures for four “after four year” level attorneys is estimated to be \$314,296 [(\$61,452 salary + \$17,122 benefits) x 4 positions].
- The starting base salary for an entry level legal secretary position is \$27,816.
- The recurring increase in state expenditures for two level 5 legal secretary positions is estimated to be \$78,714 [(\$27,816 salary + \$11,541,benefits) x 2 positions].
- Based on the information provided by the DPDC, the recurring increase in expenditures for operational costs for the new division is estimated to be \$153,500.
- The total recurring increase in state expenditures for the new appellate division is estimated to be \$646,671 (\$100,161 + \$314,296 + \$78,714 + \$153,500 operational).
- The proposed legislation as amended will require 18 alternative sentencing coordinator positions for 18 judicial districts selected by the District Attorney General Conference.
- There will be a one-time increase in state expenditures of \$5,000 per position, resulting in a total one-time increase in state expenditures of \$90,000 (\$5,000 x 18 positions).
- The base salary for an alternative sentencing coordinator position is \$47,472.
- Recurring operational expenditures are estimated to be \$3,000 per position.
- The recurring increase in state expenditures for 18 alternative sentencing coordinators is estimated to be \$1,174,932, [(\$47,472 salary + \$14,802 benefits + 3,000 operational) x 18 positions].
- The total one-time increase in state expenditures as a result of this legislation is estimated to be \$140,000 (\$50,000 + \$90,000).
- The total recurring increase in state expenditures as a result of this legislation is estimated to be \$1,821,603 (\$646,671 + \$1,174,932).

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista M. Lee RNC

Krista M. Lee, Executive Director

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